# SUPREME COURT OF THE UNITED STATES.

No. ~~465.~~ 249

THE UNITED STATES, PLAINTIFFS,

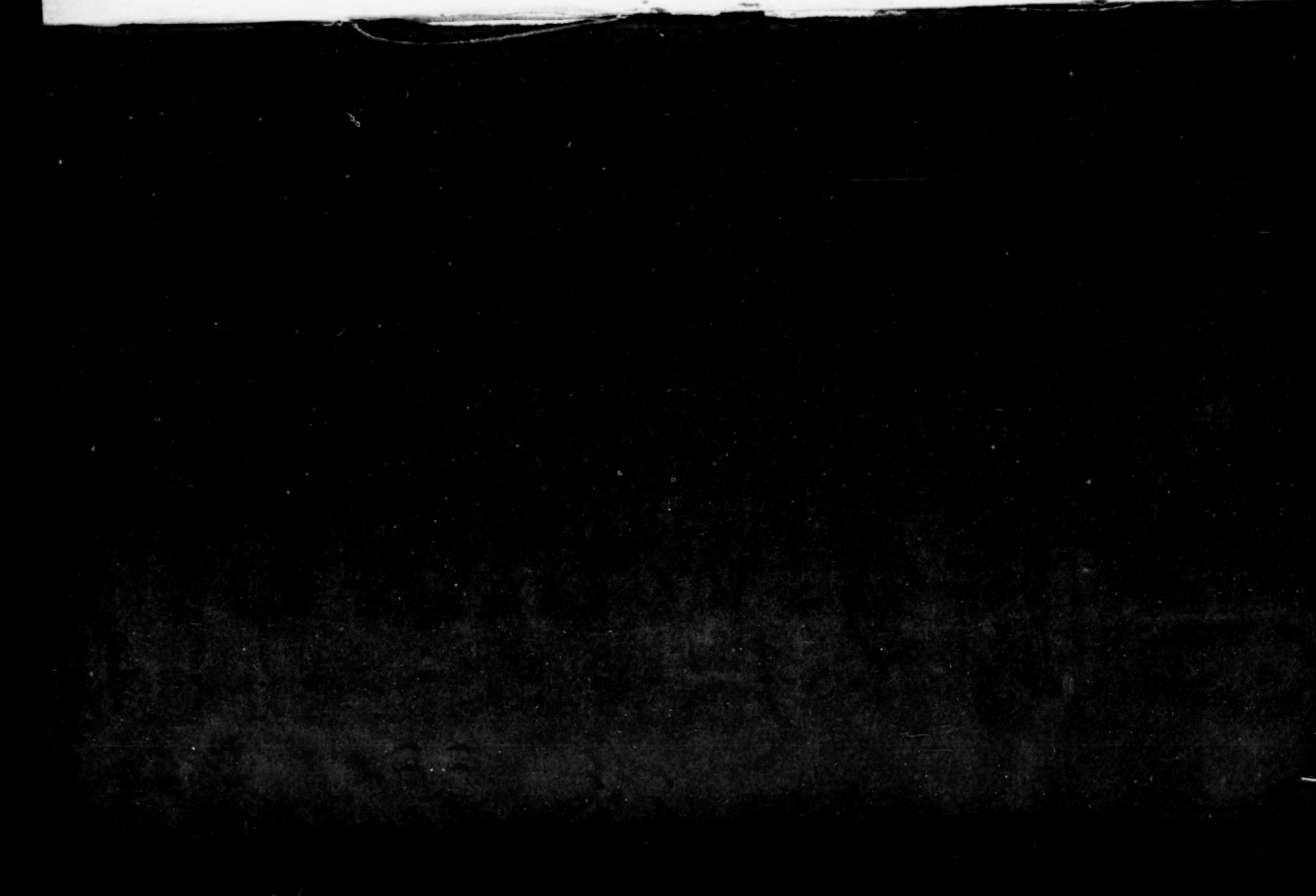
vs.

JOSEPH H. WARDLOW.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED JANUARY 4, 1871.

Dec. 1871



1 UNITED STATES OF AMERICA:

Be it remembered that the circuit court of the United States for the district of West Tennessee was begun and held at the federal court-rooms in the city of Memphis, on the fourth Monday in, it being the 28 day of, November, A. D. 1870, being the time and place designated by law for the holding of said court.

Present and presiding, the Hon. H. H. Emmons, judge of the United States circuit court for the sixth circuit thereof; and the Hon. Connally F. Trigg, United States district judge for the districts of Tennessee; present also, A. S. Mitchell, clerk.

And on Monday, the 19th day of December, A. D. 1870, the same being one of the days of said term, the following proceedings were had and entered of record in said court, to wit:

THE UNITED STATES *vs.* JOSEPH H. WARDLOW. } No. 1033. Quo warranto.

*State of the pleadings.*

This is an information of quo warranto brought by H. E. Hud-
2 son, U. S. attorney for the district of West Tennessee, for and on behalf of the United States, in pursuance of the act of Congress approved May 31, 1870, entitled "An act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes," against the defendant, Joseph H. Wardlow, who, as alleged, holds the office of county-court clerk in and for the county of Lauderdale, State of Tennessee, western district of Tennessee, contrary to the provisions of sec. 3, of the fourteenth article of amendment to the Constitution of the United States.

Said information alleges substantially as follows:

That said Joseph H. Wardlow for the space of ten days now last past, without any legal grant, warrant, or right whatsoever, has used and exercised, and still doth use and exercise, the office of county-court clerk in and for said county of Lauderdale, State of Tennessee, district of West Tennessee, and for and during all the time last above mentioned, without any legal grant, warrant, or right, hath claimed, and still claims to be said county-court clerk, and to use and enjoy the privileges
3 and franchises appertaining to the same; that he, the said Joseph H. Wardlow, before the taking and using of the office aforesaid, heretofore, to wit, on the 10th day of April, 1856, took an oath as sheriff of Lauderdale County to support the Constitution of the United States; that thereafter, and before the taking and using the office first above mentioned, to wit, on the first day of January, 1862, he, the said Joseph H. Wardlow, voluntarily gave aid and comfort to persons then in rebellion and insurrection against the United States, and did voluntarily join said armed persons, and arm himself, and wage and carry on rebellion and insurrection against the United States.

To which said information defendant demurs, and the plaintiff joins in demurrer.

This cause coming on to be heard at this term there occurred as questions—

First. Whether the sheriff of a county in the State of Tennessee, on the 10th day of May, 1856, was an officer in the sense of that part of sec. 3 of said 14th amendment which relates to the taking of an oath by an officer.

4 Second. Whether the said sec. 3 of said xiv article of amendment and the said fourteenth section of the said act of Congress of May 31st, 1870, are to be so construed as to embrace acts of rebellion or insurrection committed prior to the adoption of said fourteenth article of amendment.

On which said questions the opinions of the judges were opposed.

Whereupon, on motion of plaintiff, the said United States, by H. E. Hudson, att'y as aforesaid, that the points on which the disagreement hath happened may, during the term, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court, to be finally decided, it is ordered that the foregoin' state of the pleadings, and the facts stated therein, which are made under the direction of the judges, be certified according to the request of the plaintiff, by said H. E. Hudson, att'y, and the law in such cases made and provided.

5 UNITED STATES OF AMERICA,
*District of West Tennessee:*

I, Abram S. Mitchell, clerk of the United States circuit court for the district of West Tennessee, do hereby certify that the foregoing four pages contain a full and true copy of the proceedings of said court on the division of opinion of the judges thereof in the cause therein stated.

Witness my hand and the seal of said circuit court this 21st day of December, A. D. 1870, and of the independence of the United States the 95th year.

[SEAL.] A. S. MITCHELL, *Clerk.*

(Indorsement on cover:) No. 465. The United States, plaintiffs, vs. Joseph H. Wardlow. Certificate of division. W. Tennessee C. C. U. S. Filed 4th January, 1871.